



Extensive Changes to the Continuing Education Rules -Licensees to Benefit-

In 1998, the Utah Association of Realtors® was asked by the Real Estate Commission to form a task force to study the effectiveness of Utah's continuing education requirements. The task force was comprised of licensees across the state, and there was representation from all aspects of the real estate industry.

Based on the results of that study, the Real Estate Commission has made some extensive changes to the continuing education regulations that will increase the benefits of continuing education to the licensee.

Of great significance was the fact that the old rules did not allow for courses in "business machines," which meant no courses on uses of the computer in business, no courses on business calculators, etc. These rules obviously needed to be changed.

Also, the old rules did not allow for courses in marketing techniques, negotiation, salesmanship, sales psychology, or similar offerings. All of this has been changed. These types of courses can now be certified.

But of most significance, probably, is that now a licensee can get credit for a course that has not been previously certified by the division. If a licensee takes a real estate course in another state (or even in this state) that has been provided by a recognized provider, and that course has not been previously certified for Utah continuing education, the licensee can submit evidence of having taken the course to the division and, provided the course meets our state's requirements, the licensee

will be given CE credit for that course. In order to do this the licensee needs to request a specific form from the division called "Continuing Education Certification for a Non-certified Course." The form will direct the licensee what action to take beyond that.

**"Now a licensee can
get credit for a course
that has not been
previously certified by
the division."**

If the licensee is unsure whether the course he/she has taken will be worthy of credit, the following criteria should be considered: (1) was the course in an aspect of real estate that the licensee believes will improve his ability to better protect or serve the public, and

(2) was the course presented by an approved type of provider (college, university, vocational school, national real estate related professional society and/or organization, etc.)?

Also, of good news is the law that now allows principal brokers and associate brokers to take the Division's Trust Account Seminar to satisfy the "core" course requirement. This can only be done, however, once in every three renewal cycles.

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Illegal Inducements to Obtain Title Insurance Business

by Ted Boyer, Division Director

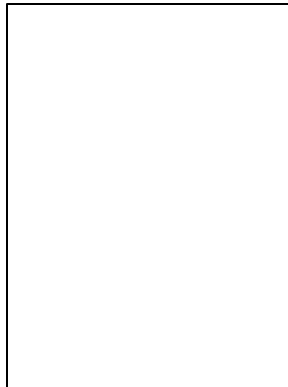
Did you know that, with very few exceptions, it is illegal for a title company to offer or provide anything with a value over \$3.00 to real estate agents and brokers to obtain title business? It's true, but apparently not everyone is aware of the law.

The State of Utah Insurance Department has contacted the Division of Real Estate through Title Market Investigator, R. Peter Stevens, J.D. The Division has also been contacted by several representatives of the title industry asking assistance in stopping our agents and brokers from soliciting illegal inducements in exchange for the placement of title work.

Generally, the solicitation comes in the form of a request for hosting a fun bus to Wendover, catering a social function, call-arounds and sales meetings, or providing other things of value in exchange for the promise to direct title work to the agency. Of course, agents and brokers are in a position to deliver on that promise. The problem is, the activity is *illegal* and could result in a class B misdemeanor conviction that is punishable by one year in jail and a \$10,000 fine to both the person *giving* the thing of value and the person *soliciting* the thing of value! (See Utah Code § 31A-2-3-8)

Insurance Department Rule R590-153-5 prohibits a title company from giving any number of benefits to a producer of title business (including agents and brokers) such as: providing insurance at a discounted rate; paying cancellation fees; furnishing computer services, delivery services, legal services, etc; paying or waiving rent for space for the producer; paying excessive rent to the producer; paying salaries or giving employee services to the producer; sponsoring activities; paying for trips, and so on. The list of prohibited inducements continues over several pages of rules. Suffice it to say that it is improper to promise to steer title business to a particular agency in exchange for things of value. If you have questions please refer to the Insurance Department rules or call Investigator Stevens at 538-3236.

Lynn Snow - Newest Commission Member



The Utah real estate profession welcomes A. Lynn Snow as our newest Real Estate Commission member! Mr. Snow comes from Roosevelt and will be a representative of the smaller, outlying communities of our state.

Snow was appointed by Governor Leavitt to fill the vacancy left by Grant Davis upon the expiration of his term. Snow's appointment will be for three years.

Mr. Snow has a long legacy of service to the real estate industry and also to the community in which he lives. He has served real estate as the President of the Uintah Basin Board of Realtors®, a Director for the Utah Association of Realtors®, and Secretary/Treasurer for the Utah Association of Realtors®. He was honored as the Realtor® of the Year by the Uintah Basin Board of Realtors®.

He has served in his community in many capacities, most recently as a Member and President of the Duchesne County School Board, a Director for the Utah Housing Finance Agency, and District Chairman, District Commissioner, Sector Chairman and Council Vice president for the Utah National Parks Council, Boy Scouts of America. He is a recipient of the Silver Beaver award from the Boy Scouts of America.

He holds the current professional designations of CPA (Certified Public Accountant), GRI (Graduate Realtors® Institute), CRS (Certified Residential Specialist) and CRB (Certified Residential Broker).

Lynn Snow will be a remarkable addition to the Real Estate Commission. Welcome aboard, Lynn!

Unlicensed Personal Assistants Unable to Provide Real Estate-Related Services

Many of the top-producing Utah real estate agents are now using personal assistants in many capacities. Depending on whether the assistant is licensed or un-licensed, problems can easily arise if all the parties don't have a clear understanding of their limitations in this type of situation.

Personal assistants can be licensed or un-licensed, and their status has a direct bearing on the services they can provide. Un-licensed personal assistants can provide clerical support services, such as filing, taking messages, running errands, and scheduling appointments. But they cannot provide specific property-related information and services.

For example, if an un-licensed personal assistant is helping staff an open house (*always* with a licensed real estate agent), other than greeting people and handing out preprinted sales materials, the assistant's activities are restricted. The un-licensed assistant is unable to discuss the property with a prospective buyer in any way. For instance, an un-licensed personal assistant is not allowed to tell the buyer anything specific about the property, such as improvements to the property, financing, etc.

But in the same scenario, *alicensed* personal assistant can staff an open house either alone or with the licensee whom he/she assists. The personal assistant can discuss the property with a prospective buyer and answer any questions that may arise. In addition, a licensed personal assistant can help in all real estate related matters, such as making the necessary arrangements for an addendum to a contract to be executed.

If the *un-licensed* personal assistant is hired directly by the agent, he/she must be paid by the agent and, as an employee of the agent, will receive a W-2 form at the end of the year. Also, the assistant cannot be paid in conjunction with the success or failure of any real estate transaction. The assistant must receive a predetermined salary separate and apart from any real estate transaction.

Even though *alicensed* personal assistant is providing real estate-related assistance to only one specific sales agent, he/she must become affiliated as a licensee with the principal broker. The reason for this is the fact that the assistant is providing services for which a real estate license is required. He/she, therefore, needs to be affiliated with a principal broker.

The *licensed* personal assistant is paid by the principal broker and can be paid either by salary or in conjunction with the closing of a real estate transaction. Even if the personal assistant is an independent contractor,

any finders fees, professional fees, or commission payments must come from the broker.

The most important point is to review the services the personal assistant is providing. If the assistant is providing real estate-related services, then the assistant must be licensed, work in the name of the broker, and receive any commission payments from the broker.



Utah Real Estate

NEWS

provide licensees with the education they need to competently serving the consumer

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Personal Safety for the Real Estate Professional and Property Protection for the Real Estate Client

A class in personal safety for the Utah real estate licensee has been developed by the Utah Division of Real Estate and the Utah Attorney General's Office, and is currently being presented across the state. The class was developed in response to two specific incidents last year where a female agent (in each case) was raped and brutally assaulted. The class educates our licensees in means of protecting themselves during their daily course of business.

Many of our Utah male licensees erroneously believe that the course is geared for women licensees only. Nothing could be further from the truth. Two main aspects of the class are (1) educating the licensee in how to assist the sellers in protecting their homes and families during the extremely vulnerable time of the term of the listing, and (2) educating the real estate licensee in how to assist his community in overall crime prevention.

Three hours of continuing education credit is being given for the class, and no prior registration is necessary. The following dates have been scheduled for the course.

In those communities where the course has not yet been scheduled, the licensees will be receiving individual notification of the time and place of the course in their area.

August 26 - MILLARD

Millard High School
35 North 200 West
6:30 p.m. - 9:30 p.m.

August 27 - PROVO/OREM

Utah Co. Board of Realtors
Conference Room (basement)
901 South Orem Blvd. - Orem
9:30 a.m. - 12:30 p.m. AND
2:00 p.m. - 5:00 p.m.

September 2 - OGDEN

Ogden Area Assoc. of Realtors
5677 South 1475 East - Unit 3-A
9:00 a.m. - 12:00 Noon AND
2:00 p.m. - 5:00 p.m.

September 15 - SALT LAKE CITY

Utah State Capitol Building
Room 223
9:00 a.m. - 12:00 Noon



Parting Shot

by Grant Davis, Commissioner

Having now completed my term as a Utah Real Estate Commissioner, I want to thank the Governor and State Senate for this appointment and opportunity. The understanding I have received on how to conduct real estate business in Utah has been priceless.

My thanks also to the Division staff and fellow commissioners who are dedicated and informed specialists in their professions. If it were possible, I would wish that all of you could someday serve in this capacity. It is humbling, and also highly educational.

Thank you for the opportunity to serve you and the real estate profession.

Did You Know?

The terms of the Utah Real Estate Commission members used to be easy to remember. There are five commissioners, and their terms used to be five years. But a couple of years ago there was a legislative ruling that changed and/or codified all the terms of all of the boards/commissions in the State.

Regarding the Utah Real Estate Commission, the governor shall now appoint each new member to a four-year term ending June 30. Instead of the senior member rolling off the commission each year and a new member coming on, approximately half of the commission will now be appointed every two years. The terms for the new appointments for the next few years will be staggered in order to facilitate this new law.

Real Estate Brokers and Liens for Commissions

by Shelley K. Wismer,
Division Staff Legal Counsel

A number of cases have come to the attention of the Division in which real estate licensees have placed liens on real property to protect their right to a commission after the failure of a transaction. The right to lien property for commissions is a commonly misunderstood area of the law, but one that may lead to serious consequences for the licensee who erroneously liens property. An improper lien may lead to criminal penalties, civil liability and disciplinary action by the Utah Real Estate Commission.

One possible source of the confusion concerning a broker's right to lien property for commissions may be the Utah Mechanic's Lien law. That statute provides that contractors, subcontractors and various other persons are entitled to a lien upon real property concerning which they have furnished materials, performed labor or rendered service.

Many real estate brokers assume they have furnished a service concerning the real property when they have furnished a ready, willing and able buyer for the property, and that this entitles them to lien the property if the seller refuses to pay a commission. The error in this assumption is that the real estate broker has not rendered a service to the PROPERTY. The service has actually been rendered

to the OWNER of the property.

A sales agency agreement is a personal services contract between the owner of the property and the real estate broker. The broker agrees to furnish a personal service, that is, his or her marketing efforts, to the owner in exchange for payment for those efforts. Since the service has been rendered for the benefit of the owner, not the property itself, it is not the type of service contemplated by the Mechanic's Lien statute.

A real estate principal broker who desires the protection of a lien on the property of one who refuses to pay a real estate commission must follow the proper procedure to obtain that lien. The principal broker must sue the owner of the property for the amount allegedly due. If the broker is successful and obtains a judgment against the owner, that judgment entitles the broker to a lien against all real property owned by the individual. In order to create the lien, the judgment must be recorded in the county Registry of Judgments. The broker may not take a short cut around this legal process.

There are many possible conse-

quences of filing an unauthorized lien. One potential consequence of an improper lien is a criminal penalty. The Mechanic's Lien statute provides that it is a Class B Misdemeanor to file a mechanic's lien against a property to procure an advantage which is not authorized by statute. In addition, the Wrongful Lien statute also makes it a crime to file ANY TYPE of lien against another's real property which is not specifically authorized by a statute, a judgment, or a document signed by the owner of the property specifically consenting to the lien. In some situations, the crime is a Class B Misdemeanor. In other situations, it can be a 3rd degree felony.

The Wrongful Lien statute also provides for civil liability for filing a wrongful lien and refusing to remove the lien within 20 days of a

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TRUST ACCOUNT SEMINAR

The seminar will cover the Administrative Rules for trust accounts established under the Utah Real Estate license law.

Location: 2970 East 3300 South, Salt Lake City

Dates: Sept. 10, Oct. 1, Nov. 5, Dec. 5

Time: 9:00 am to 12:00 noon

Credit: 3 hours continuing education

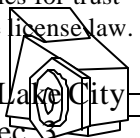
You **MUST PREREGISTER** by sending \$5 with your name, address, phone number and license number to:

Division of Real Estate

PO Box 146711

Salt Lake City, UT 84114-6711

You will receive a phone call confirming your registration the week of the seminar.



Broker Opinions of Value

by Ted Boyer, Division Director

(This article was run in the January 1998 Real Estate News. It is being printed once again at the request of the Utah Real Estate Commission)

It is becoming commonly known that some lenders and mortgage brokers in Utah are using real estate licensees to provide opinions on value of real estate for lending purposes as a less expensive alternative to obtaining an appraisal from a licensed appraiser.

Real estate licensees who provide this service must be acting under a misunderstanding of the exemption given to sales agents and brokers under the "Real Estate Appraiser Registration and Certification Act. Utah Code § 61-2b-3(1) and (2) read as follows:

61-2b-3. License or certification required.

(1) Except as provided in Subsection (2), it is unlawful for anyone to prepare, for valuable consideration, an appraisal, an appraisal report, a certified appraisal report, or perform a consultation service relating to real estate or real property in this state without first being registered, licensed, or certified in accordance with the provisions of this chapter.

(2) This section does not apply to:

(a) a real estate broker or sales agent as defined by Section 61-2-2 licensed by this state who, in the ordinary course of his business, gives an opinion:

- (i) regarding the value of real estate;
- (ii) to a potential seller or third party recommending a listing price of real estate; or
- (iii) to a potential buyer or third party recommending a purchase price of real estate;...

As you can see, the exemption is rather narrow and does not include providing a valuation of real estate upon which a lending decision is to be made. A brokers opinion of value must be given in the ordinary course of his/her business and can only be given for the purposes of recommending a listing price or a purchase price, not to value collateral securing a mortgage loan.

Brokers and Liens

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written request from the owner of the property to do so. Under this statute, one who files a wrongful lien may be liable to the owner for an amount between \$1,000 and treble the actual damages suffered by the property owner.

In addition to the remedies provided by the Wrongful Lien statute, a licensee who files an unauthorized lien might also be sued for slander of title or named in a quiet title action. And finally, a licensee who violates the law by filing an unauthorized lien may be subjected to disciplinary action by the Utah Real Estate Commission.

In summary, the Division would like to remind licensees that the Mechanic's Lien statute is not available as a method to enforce payment of real estate commissions. Specific procedures are provided by law for this process. Remember that only a principal broker may sue for a commission. If you feel that you have a claim for commission, consult your legal counsel concerning how to bring suit for payment. \$ \$ \$

In Memoriam

The Division of Real Estate expresses condolences to the families of the following real estate licensees who have recently passed away:

Frank J. Carpenter, Jr.	Salt Lake City
Paul J. Frampton	Midvale
Nadine Will Gardner	Draper
Garnett O. Garrett	Sandy
Alton T. Giles	Provo
Jodie K. Hadley	Ogden
Brad M. Jensen	Delta
S. Paul Murdock	American Fork
Herald G. Piercey	Salt Lake City
Benjamin W. Snow	Sandy



Real Estate Disciplinary Sanctions

ADAMS, DELBERT J., Sales Agent, Salt Lake City. License application granted on probationary status for two years.

ADKINS, JACK A., Principal Broker, Independent Realty Associates, Provo. License renewed on probationary status due to a recent misdemeanor conviction for Interfering with a Public Servant.

BOWDEN, ROBERT C., II, Principal Broker, Executive Referral Realty, Salt Lake City. Consented to pay a \$500.00 fine and complete a course which includes contract law principles, based on allowing a sales agent licensed with his brokerage to act as an agent for Realty Executives of Utah on a temporary basis. He maintains in mitigation that he thought this was acceptable since his brokerage is the "referral arm" of Realty Executives of Utah. The action was also based on failing to supervise the agent by failing to provide an associate broker who could give the agent accurate legal advice on contract law principles in his absence. #RE97-08-18.

DAVIS, LAURI, Sales Agent, Orangeville. Conditional license revoked on May 17, 1999 after the criminal background check required of new sales agents revealed 1989 Possession and Open Container convictions. After a post-revocation hearing, the Commission and the Director concluded that Ms. Davis had no intention to deceive on her application, having been confused by receiving an incorrect sample questionnaire from a pre-licensing school. Her license was reinstated effective June 16, 1999. #REFP99-10.

DOJAQUEZ, KIMBERLY, Sales Agent, formerly with Utah Mountain Real Estate, Inc., Midway. Consented to a \$500.00 fine, probationary period, and additional continuing education based on signing documents on behalf of her principal without written authorization to do so and on failing to obtain documents to verify that the listing agent had authority to sign documents on behalf of the seller. #RE99-02-22.

EMPEY, SYLVIA, Sales Agent, The Property Shoppe, Inc., St. George. Consented to pay a \$1,000.00 fine based on acting as the listing agent on a property and failing to disclose in writing the existence of a "due-on-sale" clause in an All-Inclusive Trust Deed ("AITD"). The Division maintained that the holders of the AITD called it due, causing the buyer to lose his investment, because the property had been sold in violation of the "due-on-sale" clause. Ms. Empey maintains that the AITD was called due because the buyer did not make a balloon payment and not because the AITD had been assumed. She also maintains in mitigation that the sellers had assured her at the time of listing that the AITD was assumable. #RE96-08-05.

FILLMORE, ROBERT F., Principal Broker, Realty Executives of Utah, Salt Lake City. Consented to pay a \$500.00 fine and complete an education course which includes contract law, based on handling agency aspects of a transaction in an incompetent manner and breach of fiduciary duty. Mr. Fillmore allowed a sales agent who was not licensed with his brokerage to represent his brokerage in a transaction. He maintains that he thought this was acceptable since she was licensed with Executive Referral Realty, the "referral arm" of his brokerage. Mr. Fillmore also incorrectly advised the agent that "verbal acceptance" of an earlier offer would take priority over a written acceptance of a later offer so long as final signatures were received within a reasonable time after the "verbal acceptance". #RE97-08-19.

FLOOR, JERRY W., formerly Principal Broker of Gump & Ayers Real Estate, Inc, Salt Lake City. Consented to a 30-month suspension of his broker's license effective July 1, 1999, and payment of a \$5,000.00 fine. During the suspension, he will be issued a sales agent license on probationary status. Among other violations, client funds were deposited into an interest-bearing trust account without authorization, and the interest used for brokerage expenses. Funds were also transferred from trust to the Gump & Ayers corporate account without verifying that the funds did not belong to clients. The corporate account subsequently came under the control of the bankruptcy trustee when the company was forced into involuntary bankruptcy, and therefore the funds which had been transferred from trust were never paid to buyers or sellers in real estate transactions. Mr. Floor maintains in mitigation that his violations were negligent, not intentional, and resulted, at least in part, from trusting certain members of his staff and failing to adequately supervise them. #RE97-04-12, RE96-05-14, and RE96-01-10.

HAMMER, JEANETTE S., Sales Agent, Inactive, Clinton. Surrendered her current license effective March 27, 1999 and agreed not to apply for a new license for at least two years. A complaint was filed with the Division by Ms. Hammer's broker alleging that she had acted as a broker by reducing the real estate commission due the brokerage on a transaction and/or that she had received real estate commission directly from the title company at closing. Ms. Hammer denied the allegations, but preferred to surrender her license rather than continue to respond to the Division's investigation of the matter. #RE98-08-03.

JOHNSON, KARIM E., Sales Agent, Salt Lake City. Conditional real estate license revoked on May 11, 1999 after the criminal background check required of new sales agents revealed that he had failed to accurately disclose his criminal history on his application for a sales agent license. #REFP99-09

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Disciplinary Sanctions

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KEARNEY, JOHN G., Sales Agent, Wardley Better Homes & Gardens, Murray. License renewed on probationary status based on a plea in abeyance to Class B misdemeanor.

LARSON, RICHARD, Sales Agent, Salt Lake City. License application granted on probationary status for two years.

LEMLEY, SHEILA, Sales Agent, Wardley Better Homes & Gardens, Heber City. Consented to a \$500.00 fine, probationary period, and additional continuing education based on signing documents on behalf of her principal without written authorization to do so and on failing to obtain documents to verify that the selling agent had authority to sign documents on behalf of the buyer. #RE99-02-07.

LITTLE, GERALD, Associate Broker, Mansell & Associates, Layton. Consented to pay a \$200.00 fine and have his license placed on probation for one year. Mr. Little agreed to take a remedial education course within 3 months as part of the settlement of Case RE95-10-08, and did not complete the course by the deadline. #RE99-02-09.

MACKAY, GINA M., Sales Agent, Executive Referral Realty, Salt Lake City. Consented to pay a \$500.00 fine and complete a course which includes contract law principles, based on representing Realty Executives of Utah although not licensed with that company, and on handling a transaction in an incompetent manner by treating "verbal acceptance" as binding. She maintains in mitigation that the principal broker and others at Realty Executives of Utah advised her that "verbal acceptance" would take priority over a later written acceptance. #RE97-08-20.

MARSHALL, RONNARD L., Principal Broker, Maple Hills Realty, Bountiful. Consented to pay a \$1,000.00 fine and complete the Division's Trust Account Seminar, based on failing to reconcile his brokerage trust account liability to the bank statements before the Division auditor instructed him on the process, and on depositing funds to cover a shortage although the Division had directed him to report any shortage he found and take no other action pending further instructions. Mr. Marshall maintains that he was not attempting to hide the shortage from the auditor, but that he misread the Division's Corrective Action Notice. #RE33-98-21.

MARTIN, WILLIS W., Sales Agent, Salt Lake City. Mr. Martin's conditional real estate license was revoked on March 12, 1999 after the criminal background check required of new sales agents revealed that he had failed to accurately disclose his criminal history on his application for a sales agent license. #REFP99-08.

MOSES, DANIEL C., Sales Agent, Salt Lake City. License application granted on probationary status for two years.

OLSEN, ADAM, Sales Agent, South Jordan. License application granted on probationary status for two years.

PACKARD, PETE, Associate Broker, ERA Brokers Consolidated, St. George. Consented to pay a \$200.00 fine and have his license placed on probation for one year. Mr. Packard agreed to take a remedial education course within 3 months as part of the settlement of Case RE98-03-05, and did not complete the course by the deadline. Mr. Packard maintains that he tried to schedule the classes during the holiday season and could not find courses at that time of the year. #RE99-02-08.

REYNOLDS, DOUGLAS S., Principal Broker, Harbor Place Management Realty, Inc., Salt Lake City. Consented to pay a \$1,500.00 fine and consented to the revocation of his broker license effective March 24, 1999, based on making deposits of funds belonging to clients whose property he managed to his operating account. Reynolds has two prior disciplinary actions, one of which involved depositing client funds to his operating account. Mr. Reynolds will be issued a sales agent license, which shall be on probationary status for 5 years. If Mr. Reynolds affiliates his sales agent license with a broker, he may not have any ownership interest, management position, or administrative position in the brokerage or property management company with which he affiliates, nor may he sign checks on a trust account unless another signature is required. Among other requirements, any trust account on which Mr. Reynolds signs shall have a semi-annual CPA audit which is reported to the Division. #RE96-01-15.

RIMMER, RANDALL J., Sales Agent, Salt Lake City. License reinstated on probationary status for two years.

SCHIRBER, RICHARD F., Principal Broker, Utah Mountain Real Estate, Inc., Midway. Agreed to surrender his license effective June 26, 1999, and not to reapply for a new license for five years. Mr. Schirber allowed \$5,000.00 on deposit in the brokerage trust account to be removed and spent for brokerage expenses. At the time the funds were spent, the transaction was scheduled to close in two weeks, but the transaction later failed. Mr. Schirber had not been performing monthly trust reconciliations, and failed to produce the brokerage financial records to the Division for audit when directed to do so. #RE33-98-15.

Don't Forget!

The licensing law requires you to report to the Division *within 10 days* a conviction of a criminal offense. Too many of our licensees forget to do this, and it becomes an issue when the licensee renews and is required to complete the Qualifying Questionnaire which asks these types of questions. Don't wait until then to report the problem. The law says "10 days."

Real Estate Auctions

SPETH, ERIC R., Sales Agent, Logan. Mr. Speth's conditional real estate license was revoked on February 16, 1999 after the criminal background check required of new sales agents revealed that he had failed to accurately disclose his criminal history. After a post-revocation hearing, the Commission and the Division found that Mr. Speth had not intentionally failed to disclose minor offenses which had occurred from 1989 through 1991, and reinstated his license on March 17, 1999 on a probationary status. During the probationary period, he will be required to notify all brokers with whom he licenses about his history. #REFP99-06.

TUCKER, DARLENE J., Sales Agent, C-21 At The Rockies, St. George. Consented to pay a \$200.00 fine and have her license placed on probation for one year. Ms. Tucker agreed to take a remedial education course within 3 months as part of the settlement of Case RE96-08-08, and did not complete the course by the deadline. Ms. Tucker maintains that she tried to schedule the classes during the holiday season and could not find courses at that time of the year. #RE99-02-07.

VIGIL, JASON S., Sales Agent, Salt Lake City. License application granted on probationary status for two years.

ZAUGG, LARON T., Principal Broker, ERA Homeworks Real Estate L.L.C., South Ogden. Consented to pay a \$500.00 fine and complete a course in the real estate administrative rules, based on breaching his fiduciary duty to his clients by filing a Notice of Interest against their property in order to protect his right to a commission in the event of a sale. Mr. Zaugg maintains in mitigation that he sought advice from various professionals before filing the Notice of Interest. He did not contact the Division to inquire about the propriety of filing a Notice of Interest. #RE99-02-10.

(LAS VEGAS) HomeBid.com held its third online real estate auction last week, putting 319 Las Vegas-area properties on the market and contributing to the sale of 32 of them. HomeBid officials estimate the properties were worth about \$6 million.

A month ago the company put 163 properties in the Phoenix area on the market and contributed to the sale of 31.



HomeBid officials consider both auctions a success.

Although most homes put on the block do not get sold, and almost none actually end up going through the auction process, the focused marketing and hype surrounding the event tends to heighten consumer awareness and move some buyers to commit, rather than see "their" home go up for bid, officials say.

Realtor® Members Getting Older, Richer

(WASHINGTON) New numbers from the National Association of Realtors® show that NAR members are increasingly better educated, embrace new technology and have more training, but also are older and usually are women.

According to a member profile released last week, NAR members work an average 45-hour week, have been in the business for 13 years and earned a gross income of \$43,500 in 1998. The median gross income for a broker was \$63,100, while the typical real estate agent earned \$30,300.

The study said that 87 percent of Realtors® have some college education, compared to 49 percent of the general adult population in the United States.

Reprinted with permission from the ALQ Real Estate Intelligence Report.

remember

You Must Notify the Division

--in Writing--

Within 10 Days of

•
•

a change of personal address;
a change of business address;
a change of name;
a change of personal or business
telephone number



Appraiser Disciplinary Sanctions

ALLSOP, WILLIAM L., Senior Appraiser, Tooele. Surrendered his license and agreed not to apply for a new license for five years, acknowledging that the Board has discretion to grant or deny any future license application. The Division filed a Petition alleging, among other things, that Allsop used fictitious comparables in an appraisal report, and failed to produce records verifying the existence of the comparables or any of the data regarding the comparables. Allsop admitted he failed to obtain written verification of the information regarding the comparables, and thus failed to keep adequate records to support his findings and conclusions regarding the comparables, but neither admitted nor denied the balance of the allegations in the Petition. #AP94-12-07.

BRADSHAW, BROOKS, Registered Appraiser, Annabella, UT. License revoked by default effective November 17, 1998, based on misrepresentation, numerous USPAP violations, including violation of the ethics provision, failing to respond to the Division's request for information in response to a complaint and failing to produce data supporting his appraisals. Mr. Bradshaw valued a property in Santa Clara at \$613,000 in April, 1997 and did not disclose that the owners had acquired the home in December, 1996 for only \$335,000. He used sales data on properties which were not comparable in numerous instances. A November, 1997 report on a property in West Valley City was also erroneous, deficient or misleading in various respects. Among other violations, Mr. Bradshaw placed the name and license number of a State-Certified Appraiser on both appraisal reports without that appraiser's permission and although that appraiser did not sign, participate in, or otherwise review the reports. #AP97-08-08 and AP97-12-15.

CROSBY, GREGORY J., State-Certified Residential Appraiser, Orem. Renewal denied September 23, 1997 based on failure to disclose on his application for renewal that he had had a license in California and that he had a civil judgment against him in connection with his appraisal practice in Utah.

HIGGS, GERALD B., State-Certified General Appraiser, Sandy. After a formal hearing, Mr. Higgs' license was revoked effective October 6, 1998, based on lack of competency and negligent misrepresentations in an appraisal, violation of USPAP Standards, violation of Administrative Rules, and violation of the USPAP record keeping requirement. Mr. Higgs failed to correctly identify and locate the subject property, and thereby appraised the wrong property. He relied on unverified information provided by an employee of the client in locating the property appraised. The property was actually located in the Uinta National Forest and subject to land use regulations which would tend to diminish the value of the property. He made numerous errors in the appraisal report, including inaccurately indicating that the property was zoned for residential use, that it was on a certain highway directly across from an existing subdivision, that it had been platted into home sites, that it adjoined the National Forest which would preclude building east of the

property, that a power line could be located entirely off the property, and that access to the property was good in all directions. He also failed to ascertain the highest and best use of the property, sign or place his seal on the certification page of the report, include the expiration date of his certification in the report, or to maintain a copy of the report. #AP96-05-18.

The Utah Appraiser Registration and Certification Board has been upheld by the Utah Court of Appeals in Ronald J. Scarpa v. Department of Commerce (Case No. 970196-CA, March 19, 1998). The Board had denied Ronald J. Scarpa's application for certification and revoked his registered appraiser license effective April 1, 1997, based on a finding that he lacked honesty, integrity and truthfulness, that he engaged in unprofessional conduct, and that he had attempted to procure certification by submitting false information to the Division on his application. Scarpa claimed experience credit for appraisals on which he had not provided significant professional assistance and altered file copies of appraisals to reflect his participation as appraiser although he had not provided significant professional assistance in the performance of those appraisals to qualify for experience credit. The altered filed copies of appraisals failed to acknowledge the significant professional assistance provided by the appraiser who actually did the appraisals.

STRONG, TODD J., Registered Appraiser, Roy. Surrendered his license and agreed not to apply for a new license for three years, acknowledging that the Board has discretion to grant or deny any future license application. The Division filed a Petition alleging, among other things, that Strong signed the name of a certified appraiser without the knowledge, consent, or permission of the certified appraiser, and that he used fictitious comparables. Strong admitted that he signed the certified appraiser's signature on three appraisal reports without the certified appraiser's knowledge or consent and that three of his appraisal reports were deficient in certain respects. He neither admitted nor denied the balance of the allegations in the Petition. #AP96-06-10, AP96-07-10, AP96-07-11, and AP96-07-12.

NITZEN, LOYD II, State-Certified Residential Appraiser, Orem. Application for renewal denied on February 9, 1999, based on misconduct, including failing to pay a \$2,000.00 fine ordered by the Board in a previous disciplinary action, failing to respond to investigations of him by the Division, violation of USPAP Standards 1 and 2, violation of the USPAP Ethics Provision, violation of the USPAP Competency provision, violation of the Utah appraiser licensing law, and falsification of the Certification and Limiting Conditions on appraisals. On March 2, 1999, Mr. Nitzen requested Reconsideration by the Board, which had the effect of reinstating his license pending Reconsideration. On March 22, 1999, Reconsideration was denied, resulting in Mr. Nitzen being unlicensed again as of March 22, 1999.

Zoning: Americans With Disabilities Act Applies to Rulings

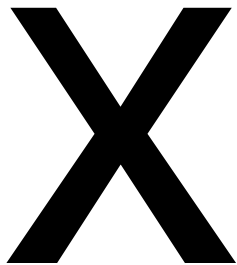
A decision by the Second Circuit Court of Appeals has held that an obscure provision of the Americans With Disabilities Act

(ADA) can be used to oppose zoning discrimination whereby local governments seek to exclude unpopular public and private services from operating in certain areas. (*Innovative Health Systems, Inc. v. City of White Plains* 117 F.3d (1st Cir. 1997).)

Background

Innovative Health Systems (IHS) is a drug and alcohol treatment center. Its owners sought a building permit in a mixed use retail and residential neighborhood. The location was regarded as ideal for the clinic because it was easily accessible with public transportation and was close to many of its clients who worked in the downtown business district. The zoning board of the City of White Plains, however, saw matters differently. Ruling that the center was not an office but a clinic, the board overrode the building commissioner and revoked the permit that had been issued.

IHS chose not to seek a zoning variance. Instead, it sued the city under Title II of the ADA. Seeking



an injunction against the zoning board, IHS argued that the zoning decision was in fact a government “service, program or activity” encompassed under the language of that provision which bars discrimination based on a person’s disability.

IHS argued that the legitimate safety concerns cited by the city were really a pretext for its real purpose, namely, discrimination against the IHS clients because of “stereotypes and generalized fears.” Distinguishing a number of earlier cases, both the federal district court and the Second Circuit agreed with IHS, thereby establishing a far reaching precedent.

ADA Provision

Title II of the ADA (as well as Section 508 of the Rehabilitation Act) prohibit discrimination based on a disability by a public entity. Specifically, the discrimination must be related to services, programs or activities of the public entity. The issue raised by the City of White Plains was whether a zoning decision constitutes a service, program or activity. Both the district court and the Second Circuit held that a zoning decision is covered by these terms. Essentially, the courts said that the two federal statutes apply to all the normal functions of a governmental entity.

The city’s interpretation of Title II was based on several lower court decisions holding that the ADA does not apply to zoning rulings. However, the Second Circuit held that none of the cases adequately analyzed the statutory language. It found no direction from any other federal circuit. On that basis, it affirmed the district court’s sound analysis, which held that there was no reasoned basis for making a distinction between various types of government activities.

The court also noted language in the Report of the House Committee on Education and Labor which said that the anti-discrimination prohibition applies to all actions of state and local government.

RELRL Observation: Among other arguments made by the city was that some of the clients of IHS engage in the illegal use of drugs. Such persons are excluded from the definition of “qualified individuals with a disability” who are protected by the ADA. The Second Circuit noted that IHS will only accept drug-free and alcohol-free clients and that the inevitable small percentage of failures should not defeat the rights of the majority of participants who are drug-free and therefore disabled under both the ADA and Rehabilitation Act.

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Division of Real Estate

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